

## **Title 17 – Counties**

### **Chapter 18a – Powers and Duties of County and District Attorney**

#### **17-18a-101. Title.**

This chapter is known as "Powers and Duties of County and District Attorney."

#### **17-18a-102. Definitions.**

- (1) "Attorney" means a county attorney described in Section [17-18a-301](#) or a district attorney described in Section 17-18a-301.
- (2) "Prosecution district" means a district created under Part 7, Prosecution District.

#### **17-18a-201. County and district attorney duties.**

The duties, functions, and responsibilities of a county attorney or district attorney, acting as a public prosecutor or as civil counsel, are as provided in this chapter.

#### **17-18a-202. County attorney powers and functions.**

- (1) Except within a county that is located in a prosecution district, the county attorney:
  - (a) is a public prosecutor for the county; and
  - (b) shall perform each public prosecutor and civil counsel duty in accordance with this chapter or as otherwise required by law.
- (2) In a county that is located within a prosecution district, the county attorney:
  - (a) is the civil counsel for the county; and
  - (b) shall perform each civil counsel duty in the county or prosecution district in accordance with this chapter or as otherwise required by law.

#### **17-18a-203. District attorney powers and functions.**

In a county that is located within a prosecution district, the district attorney:

- (1) is a public prosecutor for the county; and
- (2) shall perform each public prosecutor duty in accordance with this chapter or as otherwise required by law.

#### **17-18a-204. Consolidated office.**

Within a prosecution district, the duties and responsibilities of the district attorney and county attorney may be consolidated into one office as provided in Section [17-16-3](#).

#### **17-18a-301. County officers.**

- (1) The county attorney is an elected officer as described in Section [17-53-101](#).
- (2)
  - (a) If the boundaries of a prosecution district are located entirely within one county, the district attorney of the prosecution district is an elected officer of that county.
  - (b) If the boundaries of a prosecution district include more than one county, the interlocal agreement that creates that prosecution district in accordance with Section [17-18a-602](#) may designate the district attorney as an elected officer in one or more of the counties in which the prosecution district is located.
- (3) The district attorney:
  - (a) is a full-time employee of the prosecution district; and

- (b) may not engage in the private practice of law.
- (4) A county attorney may:
  - (a) serve as a part-time employee; and
  - (b) engage in the private practice of law, subject to [Section 17-18a-605](#) and the [Rules of Professional Conduct](#).

#### **17-18a-302. Qualifications.**

- (1) A person filing a declaration of candidacy for the office of county or district attorney shall be:
  - (a) a United States citizen;
  - (b) an attorney licensed to practice law in the state;
  - (c) an active member of the Utah State Bar in good standing;
  - (d) except as provided in Subsection (2), a registered voter in the county or prosecution district in which the attorney is elected to office; and
  - (e) except as provided in Subsection (2), as of the date of election, a resident for at least one year of the county or prosecution district in which the person seeks office.
- (2) A person appointed to the office of county or district attorney in accordance with [Section 20A-1-509.2](#) shall be:
  - (a) a United States citizen;
  - (b) an attorney licensed to practice law in the state; and
  - (c) an active member of the Utah State Bar in good standing.

#### **17-18a-401. Public prosecutor powers and duties.**

An attorney who serves as a public prosecutor shall:

- (1) except for a prosecution undertaken by a city attorney under [Section 10-3-928](#), conduct, on behalf of the state, all prosecutions for a public offense committed within a county or prosecution district;
- (2) conduct, on behalf of the county, all prosecutions for a public offense in violation of a county criminal ordinance; and
- (3) perform all other duties and responsibilities as required by law.

#### **17-18a-402. Pretrial responsibilities.**

- (1) (a) A public prosecutor shall:
  - (i) institute proceedings before the proper court:
    - (A) for the arrest of a person charged with a public offense; or
    - (B) if the prosecutor has probable cause to believe that a public offense has been committed and a grand jury has been convened by a court;
  - (ii) draw all indictments and information for offenses against:
    - (A) the laws of the state occurring within the county; and
    - (B) the criminal ordinances of the county;
  - (iii) cause all persons under indictment or informed against to be speedily arraigned for crimes charged; and
  - (iv) issue subpoenas for all witnesses for the state or for the county in the prosecution of a criminal ordinance.
- (b) A public prosecutor described in Subsection (1)(a)(i)(B) shall:
  - (i) assist and attend the deliberations of the grand jury; and
  - (ii) prepare all necessary indictments and arrange for the subpoena of witnesses to

appear before the grand jury.

(2) The public prosecutor may:

(a) examine as to the sufficiency of an appearance bond that may be tendered to the court; and

(b) upon a court order:

(i) institute proceedings for the recovery upon forfeiture of a bond running to the state or county; and

(ii) enforce the collection of a bond described in Subsection (2)(b)(i).

(3) The public prosecutor is authorized to grant transactional immunity to a witness for violation of a state statute or county criminal ordinance.

#### **17-18a-403. Appeal.**

(1) A public prosecutor shall assist and cooperate, as required by the attorney general, in a case that may be appealed to the Court of Appeals or Utah Supreme Court regarding a criminal violation of state statute.

(2) A public prosecutor shall appear and prosecute all appeals, in the appropriate court, for a crime charged as a misdemeanor in district court or as a violation of a county criminal ordinance.

#### **17-18a-404. Juvenile proceedings.**

For a proceeding involving a charge of juvenile delinquency, a public prosecutor shall appear and prosecute for the state in the juvenile court of the county.

#### **17-18a-405. Civil responsibilities of public prosecutors.**

A public prosecutor may act as legal counsel to the state, county, government agency, or government entity regarding the following matters of civil law:

(1) bail bond forfeiture actions;

(2) actions for the forfeiture of property or contraband, as provided in [Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act](#);

(3) civil actions incidental to or appropriate to supplement a public prosecutor's duties, including an injunction, a habeas corpus, a declaratory action, or an extraordinary writ action, in which the interests of the state may be affected; and

(4) any other civil duties related to criminal prosecution that are otherwise provided by statute.

#### **17-18a-501. Duties as civil counsel.**

The attorney shall:

(1) appear in, prosecute, and defend each civil action in which the county is a party;

(2) prosecute, either directly or through a private contract for debt collection, each action for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(3) prosecute each appeal regarding a civil counsel's duties or functions in which the county is a party;

(4) act as the civil legal advisor to the county; and

(5) attend the meetings and hearings of the county legislative body as necessary.

**17-18a-502. Civil violation of county ordinance.**

The civil counsel shall enforce and prosecute, in the appropriate court, civil violations of a county ordinance.

**17-18a-503. Legal opinions.**

The civil counsel shall prepare a legal opinion in writing to a county officer on matters relating to the duties of the respective officer's office.

**17-18a-504. Review and approve as to form.**

The civil counsel shall review and approve as to form and legality each county contract, ordinance, regulation, real estate document, conveyance, and legal document.

**17-18a-505. Escheats to the state.**

The civil counsel shall:

- (1) assist in determining what estate or property located within the county escheates or reverts to the state; and
- (2) provide assistance to the county assessor and the state auditor in discovering and recovering an escheat.

**17-18a-601. Assistance to the attorney general.**

- (1) (a) The attorney shall appear and assist the attorney general in criminal and civil legal matters involving the state if:
  - (i) except as provided in Subsection (1)(b), the attorney general requests assistance;
  - or
  - (ii) the attorney is required by law to provide assistance.(b) The attorney is not required to provide, if requested, the attorney general assistance if the attorney's assistance would:
  - (i) interfere with the attorney's duties and responsibilities to the county; or
  - (ii) create a conflict of interest.(c) The attorney shall cooperate with the attorney general in an investigation, including an investigation described in [Section 67-5-18](#).
- (2) The attorney general shall assist the attorney with a criminal prosecution if a court:
  - (a) finds that the attorney is unable to satisfactorily and adequately perform the duties of prosecuting a criminal case; and
  - (b) recommends that the attorney seek additional legal assistance.

**17-18a-602. Deputy attorneys.**

- (1) The attorney may employ a deputy attorney to perform the duties of public prosecutor or civil counsel.
- (2) (a) Subject to the approval of the county attorney, the district attorney may cross deputize a county deputy attorney as a deputy district attorney.  
(b) Subject to the approval of the district attorney, the county attorney may cross deputize a deputy district attorney as a deputy county attorney.
- (3) The county attorney may specially deputize, for a limited time or limited purpose, an attorney licensed to practice law in the state and in good standing with the Utah State Bar as a deputy to assist in any public prosecutor or civil counsel duties specified in the special deputization.

#### **17-18a-603. Legislative functions.**

The attorney:

- (1) may review a state statute;
- (2) shall review each county ordinance;
- (3) shall call to the attention of the state Legislature or the county legislative body any defect in the operation of the law; and
- (4) shall suggest and assist in presenting an amendment to correct the defect.

#### **17-18a-604. Other duties.**

The attorney shall perform each duty and responsibility of public prosecutor and civil counsel as provided by statute or ordinance.

#### **17-18a-605. Prohibited acts.**

- (1) Within the state, the attorney may not consult with or otherwise represent a person charged with a crime, misdemeanor, or breach of a criminal statute or ordinance.
- (2) A public prosecutor may not prosecute or dismiss in the name of the state a case in which the public prosecutor has previously acted as legal counsel for the accused.
- (3) A public prosecutor may not after the filing of an indictment or information and without the consent of the court:
  - (a) compromise a prosecution; or
  - (b) enter a plea of nolle prosequi.

#### **17-18a-701. Creation of a prosecution district.**

A county legislative body may, by ordinance, create a countywide prosecution district.

#### **17-18a-702. Multicounty prosecution district.**

- (1)
  - (a) Subject to Subsection (2), two or more counties, whether or not contiguous, may enter into an agreement in accordance with [Title 11, Chapter 13, Interlocal Cooperation Act](#), to create and maintain a prosecution district.
  - (b) A prosecution district described in Subsection (1)(a) shall include all of the area within the boundaries of each county party to the agreement.
- (2) A county may not enter into an agreement to create a multicounty prosecution district unless each county entering into the agreement is located within a single judicial district, as described in Section [78A-1-102](#), with the other party counties.

#### **17-18a-703. Dissolution of prosecution district.**

- (1) A county legislative body of a prosecution district described in Section [17-18a-701](#), or the legislative bodies of multiple counties within a multicounty prosecution district described in Section [17-18a-702](#), may not dissolve the prosecution district or multicounty prosecution district, respectively, during the term of office of an elected or appointed district attorney.
- (2) Each county legislative body shall ensure that an ordinance dissolving a prosecution district within a single county or an interlocal agreement dissolving a prosecution district within multiple counties:
  - (a) is enacted before February 1 of the year in which the regular general election, as defined in Section [20A-1-102](#), is held to elect an attorney; and
  - (b) takes effect on the first Monday in January after the year in which the attorney is elected.

**17-18a-801. Public prosecutor's ethical duties.**

An attorney exercising public prosecutor duties under this chapter:

- (1) is a lawyer representing an organization as a client under the [Rules of Professional Conduct, Rule 1.13](#);
- (2) represents the state as an organizational client;
- (3) is considered the representative of the state; and
- (4) is empowered to make commitments for and decisions on behalf of the state.

**17-18a-802. Representation by civil counsel -- County is client.**

- (1)
  - (a) An attorney acting as civil counsel under this chapter represents an organization as a client in accordance with [Rules of Professional Conduct, Rule 1.13](#).
  - (b) The county is the client organization described in Subsection (1)(a).
- (2) The attorney:
  - (a) does not represent a county commission, county agency, county board, county council, county officer, or county employee;
  - (b) counsels with the county regarding civil matters; and
  - (c) receives direction from the county through the county elected officers in accordance with the officers' duties and powers in accordance with law.
- (3) Notwithstanding Subsection (2)(a), the attorney may represent an employee named as a party in litigation:
  - (a) with the approval of the county executive; and
  - (b) if permitted by law and the [Rules of Professional Conduct](#).

**17-18a-803. License suspended -- Vacancy.**

If the attorney is suspended or disbarred from the practice of law in the state, the attorney's office is vacant immediately upon suspension or disbarment.